



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R09-RCRA-2019-0491; FRL-10019-33-Region 9]

California: Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Correction.

SUMMARY: The Environmental Protection Agency (EPA) approved revisions to California's federally authorized hazardous waste program by publishing proposed and final rules in the *Federal Register* on October 18, 2019 and January 14, 2020, respectively. The notice for the proposed rule inadvertently and unintentionally left out citations for approving the State's authority to adopt additional waste streams as universal wastes in the *State Analogues to the Federal Program* table. In addition, the scope of the State program that is considered "broader in scope" than the federal program was mis-designated. We are proposing to correct these and related errors. EPA seeks public comment prior to taking final action.

DATES: Comments on this proposed correction must be received by **[insert date 30 days after date of publication in the *Federal Register*]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-RCRA-2019-0491, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public

comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Laurie Amaro, EPA Region 9, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3364 or by email at Amaro.Laurie@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why are corrections to the revised state program authorization necessary?

States that have received final authorization from EPA under the Resource Conservation and Recovery Act (RCRA) § 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask EPA to authorize the changes. EPA's *Federal Register* notices regarding proposed and final authorization of revisions to state hazardous waste management programs provide the public with an opportunity to comment and also offer details with respect to the scope of the revised program authorizations on which both the general public and the regulated community may rely. Where these notices omit critical information or fail to clearly delineate the scope of authorized program revisions, corrections may be necessary and/or appropriate.

B. What corrections is EPA making to this rule?

After proposing updates to California's authorized hazardous waste program on October 18, 2019 (80 FR 55871), EPA authorized changes to California's hazardous waste program on January 14, 2020 (85 FR 2038). EPA is now proposing to correct the updated authorization by clarifying that: (1) California is authorized to add federally-regulated hazardous waste streams to its universal waste program and the requirements that California establishes to manage such added waste streams are federally enforceable, whether they are added to California's universal waste program prior to or after EPA's authorization of the State's universal waste program; (2) State universal waste requirements that apply to non-RCRA wastes designated by California as "hazardous waste," also known as "non-RCRA hazardous waste," are beyond the scope of the

federal program and are not being authorized; and, similarly, (3) other wastes that are sometimes federally-regulated hazardous waste and sometimes non-RCRA hazardous waste under California law, are part of the federally authorized program, but only insofar as these materials constitute federally-regulated hazardous waste. If these corrections are finalized, these changes to the scope of California's authorized universal hazardous waste program would become effective.

C. What happens if EPA receives comments that oppose this proposed action?

EPA will consider all comments received during the comment period and address them in a final rule. You may not have another opportunity to comment. If you want to comment on the corrections proposed here, you must do so at this time.

D. What has California previously been authorized for?

California initially received final authorization for the state hazardous waste management program on July 23, 1992 (57 FR 32726), effective August 1, 1992. EPA granted final authorization for changes to California's program on the following dates: September 26, 2001 (66 FR 49118), effective September 26, 2001 and October 7, 2011 (76 FR 62303), effective October 7, 2011 and January 14, 2020 (85 FR 2038), effective January 14, 2020.

E. What changes is EPA proposing to authorize with this action?

EPA proposes to correct and clarify the terms of the January 14, 2020 authorization of California's hazardous waste program with respect to universal waste.

1. Proposed Changes to the State Analogues to the Federal Program Table

EPA is recreating in this proposal the *State Analogues to the Federal Program* table that was published in the proposed authorization update *Federal Register* notice at 84 FR 55872 (October 18, 2019). This table is a helpful tool in tracking the elements of the authorized State hazardous waste program.

As an initial matter, EPA is adding citations in the table to reflect the Agency's proposed authorization of California's authority to add waste streams to the State's universal waste

program at Title 22 of the California Code of Regulations (CCR) 66260.22 and 66260.23, the federal analogues of which are 40 CFR 260.20(a) and 260.23(a) through (d), respectively. Authorization of these provisions -- which were inadvertently omitted from the proposed and final rules authorizing California universal waste program -- is critical to EPA's ability to enforce State universal waste program requirements for federally-regulated hazardous wastes that have already been or are added to California's universal waste program in the future. If these proposed corrections to authorize 22 CCR 66260.22 and 66260.23 are finalized, EPA will be empowered to enforce California's universal waste requirements for federally regulated hazardous waste that California has already added or adds to its universal waste program pursuant to these requirements in the future.

Similarly, EPA is adding a footnote to the updated *State Analogues to the Federal Program* table to clarify the implications of the authorization of the State's universal waste program on a waste stream that the State already identified as a universal waste before the universal waste authorization update was effective, i.e., aerosol cans. This footnote clarifies that, while EPA has more recently taken action to identify aerosol cans as universal waste (citing 84 FR 67202, December 9, 2019, effective February 7, 2020), California's previous reliance on 22 CCR 66260.22 and 66260.23 to add such wastes, which are proposed to be authorized in accordance with this correction, would be considered retroactive. Thus, if these corrections are approved, California's universal waste requirements for aerosol cans would be federally enforceable. The Agency believes that these State requirements would have been included in California's universal waste authorization update application, but for the fact that the federal aerosol can universal waste rule was not in effect at the time of the State's July 10, 2019 submittal of its application. Because the Agency is correcting the recent authorization update and is now proposing approval of California's analogous provisions for adding new universal waste streams under 40 CFR 260.20 and 260.23, and because aerosol cans were previously added to California's universal waste program in accordance with its analogues to these

provisions, the Agency maintains that the clarifying footnote in this proposal is both helpful and appropriate.

The corrections proposed in this rule, and described above, would require modifications to the *State Analogues to the Federal Program* table published on October 18, 2019 (80 FR 55871), as follows:

State Analogues to the Federal Program

Description of Federal Requirement (Checklist, if applicable)	<i>Federal Register</i> date and page	Analogous State Authority California Code of Regulations (CCR) Title 22, Division 4.5 and Health and Safety Code
40 Code of Federal Regulations (CFR) 260.20(a) and 260.23(a) through (d) (Checklist 142 E)	60 FR 25492, May 11, 1995	22 CCR 66260.22, adopted 2003, amended March 15, 2003. 22 CCR 66260.23, adopted 2003, amended February 4, 2009.
40 (CFR) part 273, subparts A through G - Standards for Universal Waste ^a Excluding 273.33(a)(3)(iii) and 273.33 (b)(1) through (4) (Checklists 142 A, B, D, E, 176, 181, 209, 215) ^b	60 FR 25492, May 11, 1995 63 FR 71225, December 24, 1998 64 FR 36466, July 6, 1999 70 FR 45508, Aug. 5, 2005 71 FR 40254, July 14, 2006 ^c	22 CCR 66273, October 22, 2018. Health & Safety Code 25201.16, October 3, 2001.

^a Because several definitions in the state universal waste regulations do not have federal counterparts, the state cited additional federal regulations at 40 CFR sections 260.1, 260.10, 261.4, 262.81, 264.142 and 270.2 in support of its application for authorization of the State's universal waste program.

^b Although Checklist 214 is mentioned in the State Attorney General's Statement, EPA is not including it here because the typographical and spelling corrections made in this checklist are not relevant to the State's regulatory language.

^c *Adding Aerosol Cans to Universal Waste* (84 FR 67202, December 9, 2019, effective February 7, 2020) is not included here because it was not in effect at the time of the State's application. In addition, we are approving the State's analogous provisions for adding waste streams under 40 CFR 260.20 and 260.23, thus the state may add additional waste streams that meet the conditions outlined in 40 CFR 273.81. As a result, California's inclusion of aerosol cans in its universal waste program is also proposed to be authorized. Unlike the authorization of most of RCRA hazardous waste management requirements, the authorization of 22 CCR 66260.22(a) and 66260.23(a) through (d) means that any federally regulated hazardous waste added to California's universal waste program pursuant to these requirements are automatically authorized, regardless of when California adds them.

2. Proposed Changes to the List of State Provisions Deemed "Broader in Scope"

This notice also proposes to correct that part of EPA's California universal waste authorization update that mistakenly identified California's regulation of aerosol cans and other California-listed universal wastes as broader in scope than the federal program. EPA proposes to

revise the list of California requirements beyond the scope of the federal program by deleting the following paragraph from the list of State requirements that are broader in scope than the federal program (section G from the October 18, 2019 proposal):

California-only universal wastes. California has added the following non-RCRA waste streams to its universal waste program: aerosol cans, cathode ray tubes (CRTs), CRT glass and electronic devices.

The inclusion of this language in this section of the 2019 proposal was an inadvertent error. These materials were all previously identified by California as universal hazardous waste in accordance with 22 CCR 66260.22 and 66260.23 and, except for aerosol cans, were all included in California's authorization update application. As a result, similar to aerosol cans, California's regulation of CRTs, CRT glass and electronic devices should be considered within the scope of the authorized California universal waste program.

The Agency is also proposing to correct the list of requirements that are beyond the scope of the federal program to clarify that non-RCRA wastes included in the California universal waste program are broader in scope than the federal program. Thus, where wastes may sometimes be federally regulated (when, for example, they exhibit a characteristic for hazardous waste) but at other times are not federally regulated (where they do not exhibit a characteristic), California is authorized for that part of its universal waste program that covers the federally-regulated portion of the waste stream, but not for that portion of the State program that covers "non-RCRA hazardous waste" (i.e., non-federally regulated hazardous waste that California regulates as hazardous waste). For example, electronic waste (e-waste) may sometimes constitute a RCRA hazardous waste, but is always considered a "non-RCRA hazardous waste" under California law. EPA is proposing to correct its authorization of California's universal waste program by identifying the non-federally regulated portion of such a universal waste stream as broader in scope than the federal program.

Thus, EPA proposes to add the following language to its analysis of the parts of the California universal waste program that are broader in scope than the federal program:

Non-RCRA wastes. California regulates as hazardous waste some wastes not regulated by EPA under RCRA. These are referred to as “non-RCRA hazardous waste.” Any non-RCRA hazardous wastes that a state regulates as a hazardous waste are generally considered beyond the scope of the federal program (broader-in-scope). To the extent that California has included non-RCRA hazardous wastes in the State’s universal waste program, regulation of those non-RCRA hazardous wastes as universal waste would be broader in scope than the federal program.

l. How does this action affect Indian country (18 U.S.C. 1151) in California?

California is not authorized to carry out its hazardous waste program in Indian country within the state. Therefore, this action has no effect on Indian country. EPA retains jurisdiction over Indian country and will continue to implement and administer the federal RCRA program on these lands.

K. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action (RCRA state authorization) from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore, this action is not subject to review by OMB. This action proposes corrections to the authorization of state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by state law. Accordingly, this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes correction of the authorization of pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). As explained above, this proposed action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action

will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely corrects the *Federal Register* notice in which EPA authorized state requirements as part of the state RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This proposed action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children. This proposed correction is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a state's application for authorization, as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 do not apply. See 15 U.S.C. § 272 note, sec. 12(d)(3), Pub. L. No. 104-113, 110 Stat. 783 (Mar. 7, 1996) (exempting compliance with the NTTAA’s requirement to use VCS if compliance is “inconsistent with applicable law”). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed correction to its rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the proposed correction to the rule in accordance with the “Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of

Unanticipated Takings” issued under the Executive Order. This proposed correction to the rule authorizing California’s universal waste program does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this proposed correction to the California universal waste authorization rule authorizes pre-existing state rules which are at least equivalent to, and no less stringent than existing federal requirements, and impose no additional requirements beyond those imposed by state law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule correction in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This proposed correction is not a “major rule” as defined by 5 U.S.C. 804(2).

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: February 26, 2021.

Deborah Jordan

Acting Regional Administrator,
Region IX.

[FR Doc. 2021-04586 Filed: 3/4/2021 8:45 am; Publication Date: 3/5/2021]